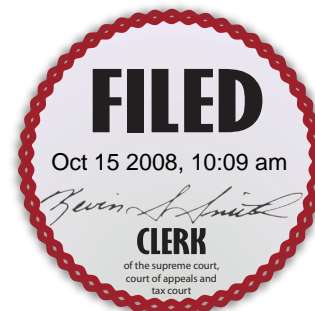


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT BRATTON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0805-CR-267

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0206-FA-177188

October 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Robert Bratton appeals his convictions for two counts of attempted murder and possession of a firearm by a serious violent felon. Specifically, he contends that the evidence is insufficient to support his convictions. Because the evidence shows that Bratton was the only person in the vicinity at the time of the shootings, one of the victims immediately identified Bratton by nickname after the shootings, this same victim witnessed Bratton fire additional shots at the other victim, Bratton fled after the shootings, and both victims identified Bratton by photograph before trial, we affirm his convictions.

Facts and Procedural History

The facts most favorable to the verdict reveal that on May 8, 2002, Crystal Stewart and Jason Lane were hanging out at a friend's house on Congress Avenue in Indianapolis smoking marijuana when Bratton a/k/a "Menace" drove up in his car. Crystal and Jason had known Bratton for several years and saw him on a daily basis, but they did not know his real name. Crystal and Jason decided to join Bratton and another unidentified woman on a trip to buy some "better" marijuana.¹ Tr. p. 159. Crystal and Jason climbed into the backseat of Bratton's car, and Bratton drove to a house at Dr. Martin Luther King, Jr. and 33rd Streets. Upon arriving at the house, Bratton went inside while the others waited in the car. Later, the unidentified woman joined Bratton inside the house. Crystal then moved to the front passenger seat, and she and Jason continued waiting in the car. About thirty minutes later, Bratton pulled up in another vehicle, jumped back in the car with

¹ This was apparently to celebrate the fact that Bratton "hadn't seen [Jason] since [Jason] had got shot the first time so [Bratton] said he was going to buy some weed to smoke with [Jason]." Tr. p. 74.

Crystal and Jason, and drove to the east side of town. The unidentified woman never returned.

During the drive across town, Bratton was nervous and not very talkative and said that somebody had stolen his money. As a result of Bratton's marked change in behavior, Crystal was extremely fearful during this drive, and neither Crystal nor Jason knew where they were going. When they arrived at their destination at Gale and 36th Streets, Bratton pulled into an alley and parked the car. Nobody else was around the car at the time. As an excuse to exit the car, Crystal asked Bratton if the people at this house would let her use the restroom, and Bratton said yes. As Crystal stepped out of the front passenger side of the car, she was shot in the left side of her head and fell to the ground. After watching Crystal fall to the ground, Jason tried to exit the car from the rear driver's side but was shot in the lower right part of his jaw, forcing him to fall back into his seat. Crystal, who by this time had stood up, observed Bratton shoot Jason in the leg and back. *Id.* at 171. In all, five shots were fired. Bratton fled, and Jason staggered out of the car. Crystal went to a nearby house for help.

Police interviewed Crystal before she was taken to the hospital, and she told them that "Menace" shot both her and Jason. Crystal spent one day in the hospital. Jason was taken to the hospital for surgery and spent several days in the hospital. Several days after the shootings, Jason looked through hundreds of photos and positively identified Bratton. Then, a couple weeks after the shootings, Crystal identified Bratton from a photo array. Jason also identified Bratton from a physical lineup before trial.

In June 2002, the State charged Bratton with two counts of Class A felony attempted murder, Class B felony unlawful possession of a firearm by a serious violent felon, and Class C felony carrying a handgun without a license. The State also alleged that Bratton was a habitual offender. A jury trial was held in September 2007.² The jury found Bratton guilty as charged and also found him to be a habitual offender. The trial court sentenced Bratton to thirty years for the attempted murder of Jason, enhanced by thirty years for the habitual offender finding, and thirty years for the attempted murder of Crystal, to be served consecutively. The court also sentenced Bratton to a concurrent term of ten years for possession of a firearm by a serious violent felon. The court vacated the conviction for carrying a handgun without a license. Thus, Bratton's aggregate sentence is ninety years. Bratton now appeals.

Discussion and Decision

Bratton raises one issue on appeal. He contends that the evidence is insufficient to support his convictions for attempted murder and possession of a firearm by a serious violent felon because "[t]here was no direct evidence that Robert Bratton was the person or persons who shot Jason Lane and Crystal Stewart on May 8, 2002; neither victim testified that they actually saw him with or fire a gun. The only circumstantial evidence to support the verdicts was the fact that he was by the side of the car and left during or after the shots were fired."³ Appellant's Br. p. 5.

² Jason failed to appear for the first jury trial, which was held in February 2004, and that trial resulted in a hung jury.

³ We note that Bratton does not challenge the sufficiency of the evidence for the individual elements of his convictions; rather, he focuses only on identity. Likewise, we will do the same.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted).

In addition, a conviction may be based purely on circumstantial evidence. *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995), *reh'g denied*. If so, we will not disturb the verdict if the fact finder could reasonably infer from the evidence presented that the defendant is guilty beyond a reasonable doubt. *Brown v. State*, 827 N.E.2d 149, 152 (Ind. Ct. App. 2005). The circumstantial evidence need not overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. *Id.* Flight may be considered as circumstantial evidence of guilt or consciousness of guilt. *Brown v. State*, 563 N.E.2d 103, 107 (Ind. 1990).

On appeal, Bratton relies almost exclusively on the fact that Crystal and Jason did not see who shot them. It is true that, because of their positions, Crystal and Jason did not see Bratton shoot them. However, at the time of the shots, no one else besides

Bratton was in the vicinity of the car. Moreover, after Jason was initially shot in the mouth, Crystal saw Bratton continue to shoot Jason:

Q And did you hear any more shots fired?

A Yes, ma'am.

Q Do you know about how many?

A I don't know how many. I just know – I seen the shooting, the shooting into the car.

Q Who was shooting?

A Robert Bratton.

Q When – did you see where he went, where Robert Bratton went?

A No. He just – he ran off and then Jason started climbing out of the car.

Tr. p. 171.

Bratton also relies on Jason's trial testimony, wherein he expressed some doubt, contrary to earlier statements he made to the police and in his 2003 deposition, that Bratton was the shooter based on his newfound knowledge that photos depicted bullet holes in the rear window of the car. Although Jason was a State's witness, the State then poked holes in Jason's on-the-stand questioning of his own story. Nevertheless, the jury heard Jason's testimony, and Jason did not waver in his testimony that Bratton was "standing right there" when he was shot, nobody else was standing there, he saw a gun, and he tried to reach for the gun. *Id.* at 101. Jason rounded out his testimony by stating that he was initially scared of Bratton, he hid in California for a few months, and although he was not scared of Bratton any more, he did not want to come to trial.

In sum, the evidence shows that Bratton was in an agitated state immediately before the shootings. When Bratton pulled into the alley and parked, no one was in the vicinity of the car. According to Crystal, Bratton was sitting in the car and she was shot on the left side of her head as she exited the car through the front passenger side door. *Id.*

at 188. According to both Crystal and Jason, Bratton was still in the car when Jason came over the seat and was shot in the face. *Id.* at 93, 170, 188. Bratton then exited the car, and Crystal witnessed Bratton firing more shots into the car, which struck Jason in the leg and back. *Id.* at 171, 188. Bratton then fled. As for the physical evidence, Detective Michael O'Connor from the Indianapolis Metropolitan Police Department testified that three shots were fired from the driver's side door and two shots were fired from the rear of the car. *Id.* at 221. The evidence is sufficient to support Bratton's convictions for attempted murder and possession of a firearm by a serious violent felon.

Affirmed.

KIRSCH, J., and CRONE, J., concur.